



A
BRIEF REVIEW
OF THE
POLITICAL STATE OF LOWER CANADA,
SINCE THE
CONQUEST OF THE COLONY,
TO THE PRESENT DAY.
TO WHICH ARE ADDED,
MEMOIRS OF THE ADMINISTRATIONS
OF THE
COLONIAL GOVERNMENT
OF LOWER CANADA,

BY
SIR GORDON DRUMMOND,
AND
SIR JOHN COAPE SHERBROOKE,

BY ROBERT CHRISTIE

NEW-YORK:

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Southern District of New-York, ss.

BE IT REMEMBERED, that on the twenty-eighth day of November, in the forty-third year of the Independence of the United States of America, William A. Mercein, of the said District, hath deposited in this office the title of a Book, the right whereof he claims as Proprietor, in the words following, to wit:

"A Brief Review of the Political State of Lower Canada, since the Conquest of the Colony to the Present Day. To which are added, Memoirs of the Administrations of the Colonial Government of Lower Canada, by Sir Gordon Drummond, and Sir John Coape Sherbrooke. By Robert Christie."

In conformity to the Act of Congress of the United States, entitled "An Act for the encouragement of Learning, by securing the copies of Maps, Charts, and Books to the authors and proprietors of such copies, during the time therein mentioned." And also to an Act, entitled "An Act, supplementary to an Act, entitled an Act for the encouragement of Learning, by securing the copies of Maps, Charts, and Books to the authors and proprietors of such copies, during the times therein mentioned, and extending the benefits thereof to the arts of designing, engraving, and etching historical and other prints."

JAMES DILL,

Clerk of the Southern District of New-York.

ERRATA.

Page 17	line 22	for removes, read removed.
21	2	for Laws, read Law.
30	11	for trucking, read truckling.
34	27	for advantage, read advantages.
41	2	for Administrations, read Administration.
46	12	for Chief Justice, read, Chief Justices.
50	3	for acquainted, read <i>un</i> acquainted.
53	4	for reserved, read <i>pres</i> erved.
56	17	for Sir, read Mr.
59	6	for Panet, read Panet.

NOTICE.

THE present publication, intended as a sequel to a small volume, which, some months since, was re-printed at New-York from a Quebec edition, under the title of "Military and Naval Operations in the Canadas during the late War, &c." may be interesting to the general reader, by the short review it contains of the political progress of Lower Canada, from the period of the conquest to the present day. Among the motives which have induced the author to publish this short but imperfect, though he trusts impartial sketch, he acknowledges, that to remove the erroneous impressions which have prevailed abroad, with respect to Lower Canada, and which there is room to suspect, have sometimes been produced by wilful misrepresentation, has been his principal object. A sense of duty to the government of which he is a subject, and to the community of which he is a member, have equally prompted his endeavours to explain, as concisely as the subject would admit, those internal difficulties which strangers have mistaken

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for evidences of a seditious spirit. To the people of both nations it must be gratifying to ascertain, as nearly as possible, the political state of a colony, interesting to one as a neighbour, to the other as a possession of much importance. The former will find ample matter to account for the disappointment of those sanguine expectations of easy conquest, raised at the commencement of the late war with Great Britain; and in the fallacy of the past, will know what reliance to place in future appearances. That the latter may derive some advantage from a succinct statement of those occurrences, which at certain periods may unnecessarily have excited distrust against a peaceful, patient, and loyal people, is the first wish, and will be the best recompense of the author.

Quebec, 31st October, 1818.

A

BRIEF REVIEW

OF

THE POLITICAL STATE OF CANADA SINCE THE CONQUEST OF
THAT COLONY TO THE PRESENT DAY.

PREVIOUS to the establishment of the present constitution of the Canadas, the government of the province of Quebec was vested in a governor and legislative council, by whom such ordinances as were occasionally found expedient for the local regulation of affairs were enacted.

By an act* of the imperial parliament, the members of the legislative council were not to be less than fifteen, nor to exceed twenty-three in number. This body was restricted from imposing any taxes other than for the purpose of making roads, erecting and repairing public buildings, or respecting the local convenience of any town or district of the province. The Canadian noblesse, and such

* 14 Geo. III. chap. 83.

reputable characters in the province as were deemed worthy of distinction, were sometimes selected for a seat in the public councils; but the government of the day appears to have placed more reliance upon the British emigrants, chiefly composed of commercial adventurers, who had followed the army at the period of the conquest, than upon the Canadian subjects, who were cautiously admitted to the ministerial confidence. The direction of affairs in the colony necessarily fell into hands little capable of impressing the new subjects with a sense of respect for their conquerors, or to conciliate their esteem and attachment; and although the obedient habits of the Canadian submitted in silence to the abuses of the times, it was rather owing to a consciousness that remonstrance would excite injustice and persecution, than from a real acquiescence in the order of things.

The courts of justice and the public offices were frequently occupied by persons of mean attainments, and sometimes of doubtful integrity: raised from mediocrity to power and importance, it can scarcely be supposed that they should have manifested that prudence and moderation, which in conquest peculiarly characterize well-bred Englishmen, nor that such of the new subjects as might be associated with them in office, could be eminent

ior talents; and that the improvement of the moral and political concerns of their country, could have been the serious object of their care. In the midst of this dearth of virtue and patriotism, the disinterested exertions of a governor and other military characters, occasionally relieved the British name from the level to which it had sunk in the opinion of the Canadians, who accustomed to warfare, and trained in the camp, had imbibed those high notions of honour which prevail in all armies, and which they had a right to expect in their conquerors.

The endeavours of these, however honourable to their country and creditable to themselves, were often fruitless, as they were actively opposed by persons who aspired at colonial influence, and who from a community of interests soon combined into a party, which not only controlled the native interests, but have been known to influence the government itself, and when occasion required, to sacrifice the governor. The establishment of this self-created oligarchy in the colony, thwarted the beneficent views of the mother country, and checked the improvement of the internal state of the province. Canada might have flourished even under the absolute sway of a military governor, whose honour and reputation, ever dear to a soldier, must in a great measure have depended upon the pru-

dence of his conduct, and the favourable impression it produced upon the new subjects. Not so the trade, which, greedy and insatiate of dominion, were little scrupulous on points of national policy, and to secure a monopoly in the colonial commerce, boldly trampled on the native and landed interests of the province.

Hence the divisions which at various periods have agitated Lower Canada, and of which we shall, as clearly and concisely as we can, pursue the progress and trace the results. To avoid proximity, and to be intelligible to the reader, we shall (however reluctantly), in future, denominate the combination of which we have marked the origin, *the party*, and those who were opposed to them, as they consisted principally of the new subjects, proprietors of the soil, *the country*.

By the king's proclamation, shortly after the peace of 1763, the governor of this, as well as those of other colonies recently acquired in North America, were empowered, with the advice of their respective councils, to summon general assemblies for the purpose of enacting laws for the good government of their respective Provinces, so soon as their state and circumstances would admit thereof. But the party foresaw that the convocation of a General Assembly would excite in the province a spirit of inquiry and resistance to the

system they had adopted, which must ultimately triumph; and however liberal might have been the views of the chief of the colonial Government, his opinion necessarily yielded to that of his advisers, whose influence depended upon the existing *state and circumstances* of the province, and who, therefore, could not be supposed favourably disposed to a change of the constitution.

A policy so contracted, at once created a jealousy, and checked the growth of one of the most valuable possessions of the British empire, whose resources were capable of the most rapid and extensive development, had the native enterprise of the province met with suitable encouragement.

The American revolution cast a multitude of refugees upon the world, and as Canada had not acceded to the union, a throng of loyalists crowded into this and the neighbouring provinces of Nova Scotia and New Brunswick, where ample remuneration was provided for the losses which it was pretended they had experienced from their fidelity to the king, and the voluntary exile from their patrimonial possessions, to which they had submitted.

These soon acquired weight in the colonial councils, and the country who saw them with an eye of distrust, were disposed to question their talents much less than their probity. The party

were soon preposterously identified with the government itself. The refugee interest gave activity to the whole, and with characteristic industry improved upon the system, fortifying more than ever the barriers which had insensibly been raised between the government and the people. The position which had been gained by artifice, was maintained by fraud, and frequently by violence. Every trivial symptom of dissatisfaction, or disapproval of domestic occurrences, of little or no political import, was evidence of a revolutionary spirit, which it appeared to be the peculiar province of the party to suppress. Inferences were drawn as destitute of probability, as they were unconnected with facts; and to guard against conspiracy and revolt among the peaceable tenantry of the province, constituted the principal anxiety of the party, who found this a convenient mode of imposing silence upon the country, their political opponents.

The patient and obedient habits of the colonists, and their steady adherence to Great Britain throughout her struggle with the United States in the revolutionary war, refuted the sinister prognostics of the party, and emboldened the province to look forward to a constitution upon liberal principles, and analogous to that of the parent state. The party, after some unavailing efforts to mar the

views of the country, at length found it expedient to acquiesce with them in the attainment of their object; and the connexions of the former in Great Britain, rendered it desirable to the latter to obtain their co-operation in accomplishing the intended purpose.

The foreign trade at that period, (as indeed it is at the present day,) was almost exclusively in the hands of European merchants, established in the cities of Quebec and Montreal. Upon these the country merchants and farmers depended for the sale of their produce and supplies of British manufacture, and this monopoly of trade gave the party an influence throughout the province little inferior to that even of the government. While this advantage could be maintained, the proposed constitution might be made subservient to their views, and secure them a sway in the government of the colony, provided the new constitution could be so modelled as to enable the party to maintain a decided majority in both branches of the intended legislature. An effort was therefore made to procure a constitution qualified by the exclusion of persons professing the Roman Catholic faith, which, had it succeeded, would have totally excluded the Canadian population from all participation in the government of the province. The generous policy of the British government revolt-

ed at the insidious proposal. The memorial afterwards submitted to the king, asked for a triennial parliament, composed of representatives to be freely and indiscriminately chosen by the freeholders of the province; that the council should be composed of at least thirty members, to be appointed for life: that the criminal law of England should be maintained; that the ancient civil laws of the province should be continued, liable, however, to such alterations as the new legislature might think proper to make; that the commercial laws of England might be established in the province; that the *habeas corpus* should form part of the constitution, and in civil causes that juries be admitted at the option of either party; that the sheriffs should be annually elected by the assembly, and confirmed by the governor, upon giving security for the faithful discharge of their duties; that all offices be performed in person and not by deputy, unless in the case of leave of absence; that the appointment of judges should be for life, and during their residence in the province and good conduct; that in case of their being accused by the governor of misconduct, the council should be consulted before any suspension could ensue; if accused by the people, the complaints should be heard by the council, with the right of appeal in favour of the accused to the king; that

an appeal should lie from the colonial courts of justice to a tribunal consisting of the lord chancellor, and the judges of Westminster-Hall, and finally that the provincial legislature should be empowered to regulate the inland trade with the United States, in order to levy such duties as might be necessary to defray the expenses of the civil government of the province. The petitioners appealed with confidence to the imperial parliament for a deliverance from the confusion which prevailed in the actual state of the colonial government, and in the administration of justice. They prayed for a constitution upon a firm and liberal basis, and such as might correspond with the desire they professed of seeing the province become an ornament to the British crown.

The government of Great Britain, actuated by a just regard for the respective advantages of the old and new subjects residing in Canada, pursued a course which it was hoped would extinguish the animosity that had inflamed the colony.

The European emigrants and refugee population had principally established themselves upon the fertile lands on the north margin of the lakes Ontario and Erie, where the Canadians had not yet formed any settlements of consequence. It was, therefore, determined to divide the province of Quebec (it was then so called), into two pro-

vinces, so as to afford to either description of subjects, a decided ascendancy within the tracts of territory which they respectively occupied, and thus to confer upon both the full power, exclusively, to legislate for themselves. This plan was accordingly, at his majesty's special recommendation, adopted by the British parliament, and the province was divided into two separate governments, under the denomination of Lower Canada and Upper Canada. In each of these provinces, provincial legislatures were established, consisting of a house of assembly, of at least fifty members, for the lower province, and another for the upper province, of at least sixteen members, which with the legislative councils and governor for the time being, were empowered to legislate for their respective provinces. The members of the assemblies were to be freely elected by freeholders possessed of real property to the yearly value of forty shillings, except in the towns or townships of either of the provinces; where to be entitled to a vote, it was requisite to be possessed of a dwelling-house and lot of ground to the yearly value of five pounds, or to have resided one year within such town or township, next before the date of the writ of summons for the election, and to have paid one year's rent of a dwelling-house, at the rate of ten pounds per annum. The parliaments were declared

quadrennial, and were to meet at least once every year for the despatch of business. The legislative councils were to consist of not fewer than fifteen in Lower Canada, nor less than seven members in Upper Canada; to be appointed by the crown, and to hold their seats for life. His majesty was authorized by the act to annex to hereditary titles of honour, the right of being summoned to the legislative council, a power which, hitherto, it has not been deemed expedient to exercise.

A new and enlarged constitution being provided for Lower Canada, (to which province, it is to be understood, the sequel will exclusively relate,) its limits were defined by the proclamation of the lieutenant-governor, Sir Alured Clarke, of the 18th November, 1791, and the 26th of December ensuing, was appointed as the day upon which the constitution was to take effect. On the 2d day of May following, the province was divided and subdivided into counties, cities and towns, each of which were to choose their representatives for the assembly, amounting in all to fifty, the lowest number by law appointed for the provincial representation in the popular branch of the legislature.

The first elections were favourable to the party, and it must be owned, to the credit of those gentlemen of the trade who obtained seats in the as-

sembly, that they were chiefly instrumental in introducing a system in the mode of conducting the public business of that body, the advantages whereof will be long and universally felt in the province. Their practical knowledge of the nature of the constitution recently conferred upon the province, gained them the confidence of the Canadian members, which, if managed with discretion, might have secured a permanent influence. The party were, however, precipitate, and in their eagerness for dominion, they betrayed an unseasonable zeal for the introduction of the English language, exclusively, into all legislative proceedings and enactments; that roused the indignation of the country members, who were not acquainted with that language. They who were even versed in it, opposed the measure as an attempt to establish a precedent, at once unnecessary, ungenerous, and impolitic. It was contended that such of the old subjects as had obtained seats in the assembly, understood French (the vulgar tongue), whereas few of the new subjects understood English. That the convenience of the few, ought necessarily to yield to that of the multitude. In vain was the example of the Conqueror William appealed to, who introduced the Norman dialect into the proceedings of his councils and courts of justice in England, after the conquest. The abolition of

that disgusting badge of slavery, and the opinion of a learned commentator* on the English laws, were retorted upon the advocates of the proposed measure. Some weeks were even exhausted in angry debate upon this subject, which ended in a compromise that the business should be carried on in either tongue, and that bills presented, should be put into both languages by the clerk or his assistants; but that the text should be considered to be that of the language of the law, to which such bills might relate.

A little caution at this juncture might have been of the utmost importance to the subsequent tranquillity of the province, but the stubborn perseverance of the party awoke the suspicion of the country, who could not reconcile the overbearing spirit which the former had exhibited in the present instance, with the freedom of the new constitution. From this period, and probably from this circumstance, parties assumed a distinct character. The diffident and respectful habits of the Canadian removes him from that easy intercourse, so necessary to a good understanding between the ruler and the people, and gave an advantage to the party, who, from their situations and connexion with the administration of the government, had

* Sir William Blackstone.

fair and frequent opportunities of influencing the governor in the political concerns of the province.

The delirium of the French revolution had created a general alarm among the governments of Europe, and in this solitary corner of the world, it became fashionable to suspect the country of revolutionary principles. The least objection, however fair and unanswerable, to the ministerial measures of the day, was attributed to the influence of these; and imprisonment and disgrace awaited those who dared to question the propriety of measures, or to meddle with public affairs contrary to the sense of the party. The country felt the injustice of the imputation, but silently strengthened under the indignity, while the power of their adversaries, built upon a sandy and shifting foundation, grew proportionally weaker, as the artifice became palpable. The floating capital of the province, and the refugee talents of New-England, were, however, formidable adversaries against the plain yeomanry of Canada, and their total discomfiture cost the country many an arduous contest.

As the assembly in reality represented the province, they, by analogy, were in Lower Canada, what the house of commons were in England. The legislative council, by a parity of reasoning, assimilated themselves to the house of lords, and accordingly assumed the etiquette and ceremonials

of that exalted body, in their proceedings and communications with the house of assembly.

The creation of this branch of the Canadian legislature, originated, no doubt, in a just appreciation of the nature of the British constitution, and of the advantage of those balances by which it is poised. But the comparison was futile. The resemblance was that of the shadow to the substance. Far from possessing the comparative influence in the colony, which the wealth and extensive possessions of the British peerage command in the weighty concerns of the empire, the legislative council were, as yet, rather unpopular than otherwise. Some of those who held seats in the legislative, were at the same time members of the executive council, and such members of this, as did not belong to the former body, had succeeded in obtaining seats in the assembly.

The expenses of the civil government of the province was partially provided for, by certain duties imposed upon the trade of the colony in virtue of acts of the imperial parliament. The deficit was supplied by the British government. The moneys levied under acts of the colonial legislature were exclusively applied to local purposes, according to the directions of that body from time to time. The colonial administration, who appear to have had an illimited credit with the government at

home, cautiously abstained from calling on the assembly for funds to relieve the mother country of the civil expenses of the province, sensible that such a demand would transfer to the popular branch of the legislature the influence which the executive were anxious to secure for themselves.

A community of interests rendered the party unanimous, and therefore strong; and this strength and that unanimity were effectual, through the advantages they derived from the disposal of the public means. To maintain the position assumed by the party, required all the talent and address of which they were possessed. On every occasion where a disposition was evinced in the assembly to exercise those undeniable privileges inherent in the constitution, the prerogative was endangered, or a revolutionary spirit was discovered; and flimsy as these pretexts may appear at the present day, they produced a delusion, which the perseverance of twenty-five years, interspersed with traits of persecution and injustice, has scarcely brushed away.

It was in the same domineering spirit to which we have alluded, that the enactment of a law subsequently productive of infinite mischief, took place in the first session of the second provincial parliament.* This was termed "An Act for the

* 2d May, 1797.

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better preservation of His Majesty's Government
 as by Laws happily established in this Province,"
 commonly termed the "Suspension of the Habeas
 Corpus Act." By this law the governor was au-
 thorized to confine without bail or mainprize, by
 warrant under the hand of three members of the
 executive council, any person guilty of high trea-
 son, misprision of high treason, or upon suspicion
 of high treason, or treasonable practices. Though
 the country knew the extent and danger of the
 power thus conferred upon their adversaries, who
 had only to suspect them of treasonable practices,
 (and nothing was easier, as all opposition to the
 measures of the party was in their opinion a mis-
 prision at least,) to furnish a pretext to put into ac-
 tion this engine of despotism, they submitted to
 the sacrifice. To have refused would have in-
 volved the country in groundless imputations of
 disaffection towards the government; and it was,
 therefore, deemed more expedient to hazard the
 experiment of furnishing the party with a weapon,
 which, if used with imprudence, would at the end
 defeat their purpose, than to incur the risk of be-
 ing considered reluctant to secure the government
 against remote, or even imaginary dangers.

The criminal laws of the province were at all
 times adequate to the support and security of his
 majesty's government against intestine commotion

or foreign influence, and the history of Lower Canada affords but a solitary instance of a conviction for treason, and that, not of a native nor inhabitant of the province. A sorry adventurer from the United States, had conceived the chimerical project of seizing the fortifications of Quebec, and effecting a revolution in the province, under the patronage, and with promises of protection from the French minister then in the United States of America. A total stranger in Canada, and alike destitute of adherents and resources, his plans were so foreign from those which denote a sane understanding, that we may be pardoned in believing him far less deserving of the vengeance of the law than of compassion, and confinement as a lunatic. He was, however, legally tried, condemned, and executed as a traitor.* The example of this sorry individual was favourable to the views of the party, as it tended to promote the opinion abroad, that the province contained materials prone to combustion, which although totally untrue, presented the country in an odious light to those who had not the means of ascertaining the real state of things.

The courts of judicature were, by an act passed in the first session of the first provincial parlia-

* His name was — M'Lean. He was executed at Quebec, in the year 1796.

ment, regenerated, and tribunals of original jurisdiction (termed courts of king's bench) were established in the districts of Quebec, Montreal, and Three Rivers. The court at Quebec was to consist of the chief justice of the province, and three puisne judges; that of Montreal was to consist of a district chief justice, and three puisne judges. The court of king's bench at Three Rivers was to consist of a provincial judge (to be resident at Three Rivers), and any two judges of either of the other districts. From these courts an appeal lies to the executive council of the province, or to a quorum consisting of five members of that body, and from thence in certain cases to the king in council.

The vices of this system of judicature, however uprightly and ably it may have been conducted as far as its functionaries are concerned, have created much disgust, as well as from its peculiar organization as from the exorbitant expense of maintaining it. Upwards of twenty thousand pounds are annually absorbed, to defray the administration of justice in Lower Canada alone. Gentlemen selected either from among the landholders or the trade of the province, however respectable in other attainments, can scarcely be considered capable of forming correct opinions in a court of the highest authority in the colony, on those legal questions

which in the inferior courts have perplexed men of professional education. The judges of these courts alternately preside in appeal to revise each others judgments, and their influence must be great with such of their colleagues in that tribunal, who have not the advantages of professional attainments. Concerned at once in the legislature, in the council and in the judicature, the public could not be persuaded of their disinterestedness and impartiality in many instances, particularly in those political points which they were known to have maintained in one capacity, and which, to be consistent, they could not relinquish in the other. We shall not soil our pages with a relation of the disgraceful occurrences springing from this anomaly, in which the dignity of the bench and the freedom of elections have been violated. Such, in the intemperance of party heat, was the perversion of public justice, that a resolute and persevering assembly, rather than submit to the flagrant abuses which destroyed the public confidence in the king's courts, chose to incur the hazardous experiment of two successive dissolutions. The intrigues carried on, and the animosities created at a contested election, were rightly thought derogatory to the elevated rank of persons clothed with the judicial character. Arguments were exhausted, and incontestable facts were pro-

duced and recorded of the serious inconveniences resulting from the interference of a judge at elections; yet, never was a virtuous cause supported by more anxiety and solicitude than the party exhibited in opposing the honourable views of the country, in removing obstructions to the pure and impartial dispensation of justice. The efforts of the assembly to accomplish this desirable purpose, were contemplated in the most unfavourable light, their motives were wilfully misrepresented, and finally an unsuspecting viceroy was involved in a contest, that might easily have been avoided by a manly and dignified concession, which by procrastination lost its merit and lowered even the administration of the government in the opinion of the people. In the struggle to which we allude the party were worsted, and their influence was at once annihilated.

Men eminent for their talents, their probity, and their loyalty, who had frankly avowed their sentiments on the subject, were, in some instances, publicly insulted and reviled, and in others wantonly cast into prison, under a fictitious suspicion of treasonable practices. The administration, as if conscious of the injustice, did not, in a single instance, though earnestly solicited by the individuals who groaned under its displeasure, presume to hazard

the trial of their imputed guilt by the verdict of a jury.

The party had at this juncture reached the zenith of a baleful career, from which it was precipitated by the stubborn zeal it displayed in opposing measures, evidently wholesome, and in slandering the country at this unpropitious season. The exclusion of judges from a seat in the assembly, and the acquisition of the civil list, were the main objects of a decided majority of the assembly and of the province at large, and these were concerns in which the prerogative was seriously interested, and offences little short of misprision of treason. What in specious argument was wanting, was supplied in mysterious inferences by the party, whose boldness in assertion and superiority in cabal, checked the timid progress of the country in the pursuit of these objects, which by a steady perseverance they ultimately obtained, and which, indeed, were at length spontaneously conceded, nay, recommended by the crown. The general circulation of a free though perhaps a licentious paper in the French language, gave the people an idea of the subjects agitated in the legislature, and of the different views in which they were considered by the party and the country. The people, alive to the arguments of the press in support of the measures for which the assembly had been dissolved, une-

quivocally expressed their sense on the conduct of that branch of the legislature, by a re-election of the old members. The leading men of the party, finding their influence ebbing, for the most part declined their elections to save the disgrace of a defeat, and such as entered the lists of candidates were unsuccessful.

The arbitrary measures of the Craig administration were the effect of the party spirit prevalent at that period. Men of temperate counsels may have disapproved of the means sometimes employed, though they could not reasonably condemn the ends proposed by the assembly in this season of difficulty. But in the whole tenor of their proceedings, the most scrupulous bigot in politics can trace no real symptoms of disaffection to the government, nor conceive any plausible vindication for the severity which the viceroy exercised towards individuals whose probity was unquestionable. That he acted, however, with sincerity, and upon a mistaken conviction that his measures were indispensable, is, at the present day, as certain as that it is owing to the personal virtues of this meritorious though deluded officer, that his administration has not been stained with innocent blood.

Strange as it must appear, it is nevertheless true, that the odious law under which these arbitrary imprisonments were made, was, after a continua-

ance of fifteen years of profound tranquillity in North America, discontinued at a moment, when war was on the point of bursting out with the United States. Yet his majesty's government never had cause to regret its extinction; nor do the courts in Lower Canada furnish a single instance of a conviction for treason during the late war.

A groundless belief had been propagated abroad, which, unhappily, influenced the councils of the neighbouring states, and accelerated a wasteful and unnecessary war, that a seditious disposition prevailed in Canada. The broils excited by the overbearing insolence of party, were mistaken for disaffection to the government, and as the error was congenial to the views of the party, it was rather cherished than corrected. The experiment of a war, undertaken with the avowed intention of conquering the Canadas, removed the impression, and as it refuted the calumnious imputations of disloyalty which had been cast upon the colony, achieved also the downfall of its internal adversaries.

The country having gained a decided ascendancy, conducted the public affairs with unanimity and despatch, and the governor, on the declaration of war, finding them fully disposed to afford him the utmost assistance of which the province was capable, generously reposed his confidence in

their zeal for the public service. Liberated from the habitual constraint, under which they had laboured, it is not surprising that reaction should have sprung from the resentment of the country, who now asserted the right of the commons of the province, to inquire into, and impeach the conduct of those, who, above the ordinary reach of the laws, might, without this salutary control, trample upon the liberties of the people. The novelty of this measure of the assembly, rendered it expedient to refer to the government at home for advice on so delicate a subject, and the latent remains of the party finding the turn which affairs had taken, in the bitterness of disappointment, conspired at the ruin of the governor. Accident alone has cast a ray of light on a dark and unworthy transaction, in which the conduct of that officer, and the loyal exertions of the country have been slandered and misrepresented.* The pro-

* The paper, here alluded to, was put into the hands of one of the superior servants of the castle, at Quebec, during the absence of the governor, while at Montreal, with directions to carry it round to the different persons concerned in the transaction for their signatures. This poor, though honest, individual, suspecting something clandestine, from the charge of secrecy which had been enjoined him, had the curiosity to look into the paper. Upon finding its contents to be of so pointed a nature against the governor, he took it to a gentleman of Sir George's family, requesting that he would peruse it, saying that

In proceedings of the assembly and its progressive encroachments on the prerogative, and on the other branches of the legislature, and the inclination it had shown to demolish the whole judiciary system, with a view, as it was asserted, of establishing a control over the constituted authorities of the province, were represented in a strong though exaggerated manner. The administration of the preceding, was contrasted, with much acrimony and false colouring, with that of the present governor, who was represented as trucking to the assembly, and seeking popularity by a studied disregard of the system pursued by his predecessor, and of those persons who had supported it. He was accused of having selected for a seat on the bench, one of those men who had been imprisoned by the late governor for treasonable practices, and against whom (they observed) proceedings on that charge were still pending. His selection of others of the same description, for offices of trust and emolument, was also noticed, with some personal reflec-

it contained matter which he thought it his duty to make known at head-quarters. The gentleman to whom it was communicated did not think proper to take a copy of it, but acquainted the governor with the nature of its contents. We regret that, instead of the substance of this document, it is not in our power to put on record, a production of which even the rancour of a divine has never produced a parallel.

tions. The impeachments of the chief justices by the assembly were particularly adverted to; and as the result of this policy on the part of the governor, and of those principles in the assembly, it was stated, that the very "life-blood of loyalty was tainted in the land and the government itself palsied to the heart." These evils were said to be of vital moment, and such as could only be remedied by the interference of the king's government, which ought no longer to leave them to the combined results of "indifference, inaction and incapacity.

Such were the sentiments entertained by those to whom the governor was to look for advice, in seasons of emergency and danger; and it is not surprising that his confidence should have been withdrawn from persons in whom he could place no further reliance. The discovery of this memorial provoked others from the friends of the administration, and the yeomanry of the province, to his majesty's government, expressive of their satisfaction with, and reliance on the wisdom of the governor's administration. These addresses were transmitted to England, where, there is cause to believe, they were all laid aside without any notice. This attempt to injure the commander of the forces, was by some who had been concerned in it, afterwards, awkwardly excused by assurances to

his excellency, that they had understood it, not as reflecting upon him, but upon the minister; upon that minister to whom it was known to have been transmitted, and to whose conduct assuredly it was inapplicable.*

Notwithstanding the cabals which undermined this administration, the governor would have maintained his ground, had not the reverse experienced at Plattsburgh, wounded the national pride, and rendered his removal unavoidable. The province under this administration made rapid progress in the improvement of its constitutional endowments. While the needs of the government were liberally supplied by the assembly, that body seasonably availed itself of the advantages of its position, and boldly exercised the privileges inherent in the popular branch of the legislature, and established a salutary check upon the provincial authorities, which hitherto had put control at defiance.

The work commenced under this, was not however consummated until late in the short, though

* It is, however, an extraordinary circumstance, that some of the persons (gentlemen of no mean distinction in Lower Canada) who subscribed this paper, were not even themselves clear of its true meaning and drift. As a proof of this, one of those who signed it, added a memorandum or protest, that by so doing, he was not to be understood as asking for any alteration in the constitution of the province.

eventful administration of his successor, Sir John Coape Sherbrooke, than whom no man ever better understood the people he was sent to govern, nor entered more cordially into the spirit of their constitution. With a thorough knowledge of the parties which divided the province, he attentively listened to both, but yielded to neither. Although in some instances he appeared to concede, yet in reality he gained more in his transactions with the other branches of the legislature than he gave; and the prudent and equitable spirit of his reign was infinitely better adapted to the times, than a punctilious adherence to prerogative, which had unmeaningly been clamoured up by the party under former administrations. The events which grew out of the first session of the assembly, after his assumption of the government, enabled him to gratify that body in a way that somewhat relieved the reluctance with which the old question had been relinquished. He rendered an important service to the country, in augmenting the numbers of the legislative council, where from this circumstance, a more liberal spirit shone forth than heretofore prevailed in that branch, whose doors, hitherto closed, were now thrown open to the public. They by this means acquired credit among the people, corresponding to the wisdom which guided their councils, and thus made some progress

towards the purpose intended by their establishment, a check upon the more solid materials of the lower house. The recent weight conferred upon the legislative council by the important privilege of deciding on all cases of impeachment by the assembly, as declared by the sovereign will, may probably lead to results more congenial to private ambition than to the public weal. Hereditary honours upheld by extensive patrimonial estates, alike independent of the sovereign and the subject, may in Europe be the support of the former, and the protection of the latter, and are, therefore, essentially connected with the existence of the state.

The creation of an hereditary colonial noblesse, destitute of hereditary possessions, would entail a needy progeny of dependants upon the provincial government, and by closing, against plebeian merit, the avenues to the royal patronage, necessarily tend to destroy the popular influence of the crown.

The narrow policy of checking the development of the colonial constitution, heretofore prevalent in the province of Lower Canada, as it has no doubt been contrary to the intention, will also be found contrary to the interests of the British government. This province, accustomed to derive all its political and commercial advantage from Great Britain, will, if admitted to a fair participa-

tion of them, in common with other subjects of the empire, find no motive to seek a change of government; on the contrary, many inducements will concur to resist a political connexion with the adjacent republic in case of a rupture.

The stale conjecture that the mother country would abandon her North American possessions, as a load too onerous and unprofitable to be maintained, is now exploded. The military occupation of Canada is, at present, the only charge sustained for its preservation, and the advantages of the trade alone, exclusive of the means, which an extent of fertile territory greater than all Europe, affords to Great Britain of providing for her surplus population, and thus strengthening her empire, vastly outweighs the momentary consideration of the actual expense.

Here we may be indulged in some observations, on colonising the unsettled parts of the province, for which the present emigration from Europe offers a favourable opportunity. The present system of granting lands in Canada, is attended with such serious inconveniences to settlers, as absolutely to prevent the clearing and establishment of many of the most valuable tracts of land in North America. By the act of parliament establishing the present constitution of the Canadas, it is provided, that a proportion equal to one-seventh of all

crown lands which should thereafter be granted, be reserved for the support of a protestant clergy. A further proportion of one-seventh, is in like manner reserved in virtue of the king's instructions, for the future disposition of the crown. These reserves are, as nearly as circumstances will admit, of the same quality as the lands in respect of which they are allotted and reserved, and extend in all directions over the several townships in the province. The settlers who enter the forest and clear their lands, are, by these crown and clergy reserves, which remain in a state of nature, every where surrounded by an impenetrable wood, which at once serves as a resort for beasts of prey, and shade the adjacent land so as to prevent it from receiving, sufficiently, the warmth of the sun to ripen the grain. The opening and maintenance of roads over these reserves, which exclusively fall upon the neighbouring settlers, if they are desirous of keeping open an easy communication with either of the markets of Quebec or Montreal, is, also, another very serious burden upon the farmers resident in the townships. This, however, is a grievance which it is competent for the provincial legislature to remove, and as the subject has already been taken into consideration, it is probable that measures for that purpose will, at an early period, be adopted by the legislature. The former

is an evil which can only be removed by the government at home, and until the grievance be entirely removed, the improvement of the townships must linger, to the disadvantage and disgust of the population established in those parts of the province. The proportion of lands reserved in each township for the crown and clergy, if comprehended within a single area or lot, instead of spreading over the face of the country, in lots of two hundred acres each, one should imagine, would fully answer the purpose for which the reserves were intended by the government, without causing any inconvenience to the settlers.

The uncultivated or wood lands in Lower Canada, east of the Saint Lawrence, are generally of an excellent soil, and alone are more than adequate for the reception of all the emigrants from the United Kingdom for a century to come. The climate is mild and favourable, far beyond what it has generally, though erroneously, been understood in Europe; and judging from the productive nature of the ground, in places where infant settlements have been already formed, this section of the country will, at no very remote period, become the granary of Lower Canada. The liberal appropriations of the legislature of the province for the improvement of the internal communications, if the moneys have been judiciously laid out, will

materially facilitate the settlement of these townships.

To colonise these invaluable lands, is an object worthy of the serious attention of the mother country. The government by incurring a very inconsiderable expense in providing implements of husbandry, and a subsistence for British emigrants to Canada, until a crop could be obtained from the new lands assigned to them, would induce thousands of valuable farmers to settle in Canada, in preference to the United States. The children and descendants of these people, instead of owing their allegiance to a foreign government, would form a sturdy and loyal yeomanry along the Canadian frontier; and the weak policy of securing those possessions by an impenetrable wilderness, would be replaced by the sounder method of defending them by a robust population.

To hazard any flighty speculations on the future destiny of the British North American dominions, is not our intention; but it must be admitted by those who will examine their geographical position, with the advantages of their soil and climate in most places, that they are susceptible of becoming a most important and powerful appendage of the empire. Although amidst the busy and brilliant concerns in which the attention of the British government has since some years been engaged, the

intrinsic value of these possessions has unavoidably been overlooked, the period is at length, probably, arrived, when they are considered of great national importance, and a subject of the earnest solicitude of the parent state. The overflowing abundance of the British population, and the large and disposable capital of the nobility and principal land owners in Great Britain, cannot be more usefully and profitably employed, than in colonising the new and productive soil of the British North American territories. The national resources would thereby be infinitely multiplied, while the situations of the emigrating tenantry, and the private fortunes of those proprietors, who should invest a capital in the purchase and clearing of lands, would be essentially promoted. Among other considerations, not the least interesting, would be that of preventing a valuable portion of the British population from forsaking their native government, and incorporating themselves with a nation, with whom, from the ties of their common origin, their language, religion, and customs, they will soon be identified; whose principles they will easily imbibe, and whose interests, becoming their own, they will not scruple to promote, by assisting them to dispossess us, at some future day, of those lands, the value whereof the United States are perfectly acquainted with.

The recent appointment of an illustrious personage to the vice-royalty of British North America, and the cheering prospect of a permanent peace with the United States, must be subjects of real gratification to all who take an interest in the general prosperity of this portion of the British empire. The attention of the wealthy and enterprising from home, will, probably, be turned to the Canadas, where an immense field is displayed for the improvements, and a certain recompense awaits the industry of the husbandman. A copious migration of English yeomanry, under the patronage of the British government, or of some of the higher classes of the British people, would, in a short time, materially improve the political and agricultural aspect of Lower Canada. The exotic prejudices, which have shot up with such luxuriance as to overshadow the genuine growth of the land, would languish under the healthy shade of the British oak; while a community of interests among all denominations of the king's subjects in Lower Canada, preserved and maintained by the wisdom of government, would bring about an unity in sentiment and interest, which would, at once, render the province happy within and respected abroad, prosperous in peace, and doubly secure in the event of war.

MEMOIRS, &c.

LIEUTENANT-GENERAL SIR GORDON DRUMMOND had served in the Canadas during the administrations of Sir James Henry Craig, and from his intercourse with those who were thought to have been in the confidence of that governor, apprehensions were entertained that he might have imbibed the prejudices of his reign. *See*

The only occurrence, however, of any moment, to which the attention of the reader may be turned in the course of his short administration, is the result of the impeachments preferred by the house of assembly against the chief justices. The articles of complaint had been transmitted to England by Sir George Prevost. The misunderstanding between the legislative council and assembly, which sprung from these measures, as already noticed, deprived the latter of the means of deputing an agent to prosecute the complaints in England.

The legislative council denied the right of the assembly to impeach, unless with their concur-

rence,* and, although this doctrine could not be constitutionally maintained, yet as the colonial laws were silent on the subject, it was apprehended that sufficient influence might be exerted at home, to discountenance this new pretension of the assembly, which if acceded to, would establish a serious, though salutary, restraint upon the conduct of public men, and few gentlemen of the former body, at the period to which we allude, could be considered as personally disinterested in this respect.

The inability of the assembly, from this circumstance, to urge their pretensions by means of an agent, gave cause to expect that in the absence of any person for that purpose, the impeachments would be overlooked as a concern of little importance. As, however, one of the gentlemen implicated had proceeded to England for the purpose of repelling the accusations brought against him, there was some prospect that the government at home would, were it only in justice to these gentlemen, admit the principle, in order to enable them to justify their conduct.

The decision of this preliminary question, on which a difference subsisted between the two branches of the colonial legislature, seemed indis-

* See Appendix, letter A.

pensable, before any inquiry could properly be instituted, as well from the novelty of the question itself, as to enable the assembly to appoint an agent; a measure from which the legislative council, after the admission of such a principle on the part of the British government, could not plausibly withhold its consent.

It was not until after the lapse of a twelvemonth from the transmission of the impeachments to England, and soon after the recall and arrival of Sir George Prevost in Britain, that any serious attention appears to have been bestowed upon them by government. On the 29th June, 1815, a report from a committee of the lords of his majesty's most honourable privy council, dated the 24th of the same month, pursuant to a reference concerning the impeachments, was read and confirmed in council by his royal highness the prince regent. Those charges against the chief justices, which related to the rules of practice in their respective courts, were alone taken into consideration; and it was by an order in council, declared that these rules were made under authority of the legislative ordinances and laws of the province, and consequently that neither of the chief justices, nor the courts in which they respectively presided, had exceeded their jurisdiction, nor been guilty of any assumption of legislative power.

The charges against the chief justice of the province, which related to advice alleged to have been given to Sir James Henry Craig, were altogether excluded from consideration, because the admission of such a principle, would place it in the power of a governor of a province, to divest himself of all responsibility on points of political government.

The dismissal of the complaints was published at Quebec, late in November, by the circulation of a printed pamphlet, containing a copy of the order in council, with a partial correspondence between Lords Bathurst and Chetwynd, and the chief justice of Lower Canada, then in London.*

The sudden termination of an affair in which the province had taken a lively interest created a general sensation, and it was surmised that the assembly would not consider any acquittal of the chief justices as satisfactory, until heard in support of the complaints. Others contended that the decision of the prince regent must be taken by the assembly as definitive, and that to call it in question would amount to a high contempt of the imperial government, and the royal authority.

The legislature met on the 26th January. On the 2d February, the administrator in chief sent a

* See Appendix, B.

message by his civil secretary to the house of assembly, which was read at the bar, acquainting that body with the dismissal of their complaints against the chief justices, and the opinion of the prince regent relative to the conduct of the assembly in impeaching these persons, little flattering to the members, who had, in the preceding parliament, supported the impeachments.*

The assembly, indignant at the fate which their complaints had received, immediately after the messenger had retired from their bar, ordered a call of the house for the 14th of the same month. The message was at the same time referred to a committee of the whole, and it was unanimously resolved that the house would, on the fourteenth, resolve itself into a general committee on the message.

The subject was on the fourteenth referred to the consideration of a special committee of seven members, to whom two others were afterwards added, with directions to report their opinion on the most expedient manner of proceeding on the same. On the twenty-third this committee reported to the house, that having maturely deliberated upon the order of reference, they were of opinion that the matters disclosed in his excellency's mes-

* See Appendix, C.

sage, would render necessary an humble representation and petition to his royal highness the prince regent, and that the great importance of the matters involved in the said message, made it advisable that the wisdom of the house should be consulted, and its sense taken preparatory to such representation and petition.

On the twenty-fourth the assembly accordingly came to some resolutions on the subject. By these were expressed, a sense of the public duty under which the house had acted in impeaching the chief justice; its opinions of the right of the commons of Lower Canada to be heard, and of having an opportunity of adducing evidence in support of their charges; the causes which had prevented them from maintaining those charges; their desire of having an opportunity so to do; and finally, that an humble representation and petition, on behalf of the commons of Lower Canada, to his royal highness the prince regent be prepared, appealing to the justice of his majesty's government, and praying that an opportunity might be afforded to his majesty's most dutiful commons of Lower Canada, to be heard upon, and to maintain their complaints.* A special committee was then appointed, for preparing an humble representation

* See Appendix, D.

and petition, in conformity with the law of these resolutions.

Whether Sir Gordon Drummond was impelled by his instructions from home, to resort to a dissolution in the event that the assembly should resume this subject, or whether he spontaneously exercised the prerogative on the occasion, we cannot with certainty assert. On the twenty-sixth, before any of the measures which had been resolved were brought to maturity, his arrival at the council chamber was announced by a discharge of artillery. The assembly being summoned to attend, he, in a very short speech, expressed his regret that they should have allowed any consideration to overbear the respect due to the decision of his royal highness the prince regent, and announced his determination to prorogue the present parliament, and to recur to the sense of the people by an immediate dissolution.

Several subjects of the utmost importance were before the assembly in this session, but no more than a single act* received the royal sanction. The expediency of having an agent in England to attend to the interests of the province, whenever it might be requisite, was again considered; but, the dissolution prevented a perseverance in the mea-

* An act to regulate the trial of controverted elections, &c.

sure. The assembly, in pursuance of a resolution made in the last session, passed a bill "to appropriate a sum of money therein mentioned, to the purchase of a service of plate to be presented to Sir George Prevost, late governor-in-chief of the province, as a mark of respect for his character, and of gratitude for the services which he had rendered to the province."* This bill being sent up for the concurrence of the legislative council, was rejected by that body.

The elections for the new assembly took place in the month of March, and few alterations in the representation were made throughout the province.

In the meantime, the administrator in chief received notification of the appointment of Sir John Coape Sherbrooke, to the chief command in British North America; and on the twenty-first day of May he sailed for England, having on the day of his departure received a valedictory address from the citizens of Quebec. The temporary administration of the government devolved upon Major-General Wilson, until the arrival of Sir John Coape Sherbrooke.

The merit of Sir Gordon Drummond, in defending Upper Canada against a greatly superior force of the enemy, stands already recorded, and justly

* The sum appropriated by the bill was £5000.

entitles him to an exalted station among the soldiers of his country. The shortness and untoward circumstances which accidentally intervened during his reign in Lower Canada, place his civil administration in a less favourable light than might reasonably have been expected, under less perplexing occurrences from a person of his acknowledged worth. His popularity somewhat abated after he had dissolved the assembly, and this indeed, although others have been urged, is the only objection raised against his administration, which is susceptible of any plausible reasoning. On examining the pretensions of the assembly, they will be found compatible with the freedom of the constitution, and one can scarcely avoid thinking that a compromise might have been made without recurring to a dissolution, an experiment which on former occasions had been tried with so little advantage. On the merits of the impeachments themselves we hazard nothing, but as they professed to be the grievances and complaints of an entire province acting by its representatives, it seems but reasonable that a hearing should have been granted, and the subject maturely discussed in the presence of all the parties concerned, or of their accredited agents. The legislative council having denied the right of the assembly to impeach, had therefore refused its assent to a money appropria-

tion for the mission of an agent to England on behalf of the commons of Lower Canada. The government at home could not have been acquainted with the controversy which existed on this subject between these two branches of the colonial legislature, and might, therefore, easily have accounted for the absence of an accredited agent to urge the pretensions of the assembly. Had a formal decision on the right asserted by that body, of impeaching persons in office, suspected of high crimes and misdemeanors, been pronounced, and a subsequent hearing of all parties ensued, after a reasonable delay and notification to that effect, whatever might have been the result of the complaints in question, the government by this course of procedure would have afforded a valuable instance of its disposition to attend to the real or imaginary grievances of the colony, which, in such a case, could not but have been satisfied with the justice of the former. In justification, however, of the conduct of the administrator in chief, whose disposition has universally been acknowledged as easy and conciliating, it may very fairly be inferred, that his instructions on the present occasion were such as to leave him no discretionary means of compromising the subject with the assembly. The wisdom of these instructions (if any such were given), we are not at all disposed to call in ques-

tion, for although some dissatisfaction may have resulted from them, it would be rash to decide where opinions are widely divided, and where a government is concerned whose decisions even in error are respectable; whose honour is proverbial among the nations, and will prove, we trust, as durable as the world itself.

SIR JOHN COAPE SHERBROOKE arrived at Quebec on the 12th July, 1816, from Halifax, Nova Scotia, where his administration had given universal satisfaction. This officer, from his residence in that colony, must not have been unacquainted with the public affairs in Canada, an advantage of which he judiciously availed himself by adopting a line of policy suited to the complexion of the times. Easy of access to all men, frank towards those who came to him on public business, diligent and earnest in the accomplishment of those purposes which he considered as essential to the welfare of the province, he won the confidence of the people, from whom, in the course of his administration, he experienced no opposition, as he adopted no measures that wore the appearance of mystery, adhered to no party, nor entertained any policy that was not obviously calculated for the advancement of the public welfare.

The first act of his administration of any import, was that of a benevolent mind. Owing to the failure of the harvest in the lower parts of the district of Quebec, by early frosts, several of the parishes were threatened with famine. The governor, upon his own responsibility, threw open the king's stores, and advanced a very considerable sum of money for the purchase of such supplies

as were not in store. Provisions were forwarded before the commencement of winter to the distressed parishes, which by this seasonable relief, were reserved from the horrors of impending hunger.

The legislature met earlier in the season than usual, and the governor called their immediate attention to this subject, recommending such further measures as the nature of the evil complained of might require.

Engaged in this and other concerns of moment, the assembly postponed the consideration of the impeachments until towards the close of the session. A reluctance to enter upon this subject was indeed visible from the commencement, probably from a persuasion prevalent among the members, that the peremptory nature of the governor's instructions were such, as to leave him no discretionary power in case the assembly should resume the question.

A judge of the court of king's bench for the district of Montreal, was impeached in this session by Mr. Cuvillier, for divers alleged high crimes and misdemeanors, committed in his official capacity. The assembly, after instituting an inquiry into the grounds upon which the charges preferred against him were laid, adopted certain resolutions, and drew up an address to the prince regent, which, together with the articles of complaint, they re-

quested the governor to transmit to his royal highness. The house also requested the governor to suspend the accused from his functions while the charges were pending against him. His excellency, on receiving the address of the assembly, informed them that he would not fail to transmit their address, with the articles of complaint, and the documents accompanying the same, to the prince regent. He also acquainted them that having previously perused the evidence adduced in the course of the investigation, he had already communicated to the judge in question, his desire that he should abstain from the exercise of his judicial functions, until the determination of the prince regent, with respect to any further proceedings on the accusations, should be made known. By this prudent anticipation of the desires of the house of assembly, the governor gratified that body, without in the least compromising the pretensions of the legislative council, who still, as on a former occasion, denied the right of the assembly to impeach* without their concurrence.

The proceedings of the assembly being communicated by message to the legislative council, this body came to certain resolutions, and framed an address in like manner to the regent, stating that

* See Appendix, E.

they had in no wise participated in the charges preferred against the judge, and remonstrated against the right of the assembly to impeach, which they observed would thenceforth, if admitted, place every public officer at the mercy of the assembly, and thereby disqualify them from a faithful and independent discharge of official duty; they therefore besought his royal highness not to inflict any punishment on the accused until the articles of complaint should have been submitted to, and met with their concurrence, or until such articles of complaint, in the event that their concurrence should not be deemed necessary, should be heard and determined by them under such commission as his royal highness should see fit to issue for that purpose.

These proceedings were communicated by message to the house of assembly, where, in reply to them, it was resolved, "That the claims of the legislative council touching the complaints brought by the assembly, were not founded on the constitutional law, or any analogy thereto; that they tended to prevent offenders out of the reach of the ordinary tribunals of the country from being brought to justice, and to maintain, perpetuate, and encourage an arbitrary, illegal, tyrannical, and oppressive power over the people of the province."

A petition was presented to the assembly from

the orphan children of the late Francois Corbeil, who had died in consequence of his imprisonment at Montreal, during the administration of Sir James Henry Craig, principally complaining against the chief justice of the district of Montreal, in issuing a warrant for the imprisonment of their deceased father, and praying the assembly to adopt such measures thereupon as might appear proper.

Another petition concerning the conduct of the same gentleman, towards a member of the assembly (Mr. Sherwood) was also presented. Some time after the appearance in print of the letters, and order in council, which we have already had occasion to mention, relative to the dismissal of the complaints against the chief justices, a printed travesty, turning these into burlesque, was circulated. A groundless suspicion that Sir S. was the author, obtained some credit, and that gentleman, who by his sturdy opposition to certain measures in the legislature, where he recently had obtained a seat, had become obnoxious to a party, was singled out for a criminal prosecution for a libel upon the king's government. The chief justice of Montreal had, during the time that the court of king's bench for criminal pleas ought to have sat in that city, absented himself while attending the legislative council, where the assembly in the preceding session were expected to resume the con-

sideration of the complaints in which he was personally concerned. As the court of king's bench could not legally be held without his presence, the term was lost. To obviate this inconvenience, a commission of oyer and terminer for the district of Montreal was issued after the dissolution of the parliament. The chief justice presided in that court where a bill of indictment for a libel upon his majesty's government was found against Mr. Sherwood. It was with a view of exposing and seeking redress for the proceedings connected with this prosecution, that the present petition was laid before the house. The conduct of the chief justice, in absenting himself from his official duties, and thereby causing the laws of the land to be suspended and dispensed with, contrary to the bill of rights, were complained of. The grand jury, who had found this bill of indictment, instead of being summoned from the body of the district, had, as it was asserted, been packed from the city of Montreal. They were represented as partisans and persons inclined to second the measures of the chief justice, whose conduct in the present instance, while presiding in his court, was placed in an unfavourable light. The petition was referred to a special committee of five members, who immediately instituted an inquiry into the subject. The chief justice, in the mean time, hearing of this new

complaint against him before the assembly, wrote a letter concerning it to the governor in chief, which his excellency transmitted to the speaker, by whom it was submitted to the house, where it was received with disregard.* The committee made some progress in the inquiry, but from the unusual pressure of business in this session, it was found impossible to complete it, and leave was therefore given to continue the subject until the ensuing session.

Soon after the governor's arrival at Quebec, a bill, granting a salary to the speaker of the assembly, passed on the 25th March, 1815, received, after upwards of a year's delay, the royal sanction. By this act a salary for the speaker of the existing assembly only, which expired with that session, was provided.

On the eleventh of March, the assembly presented addresses to the governor, requesting that

* For this document see Appendix. This letter was probably intended as a confidential communication with the governor. That officer, averse to every thing like underhand dealing, openly communicated its contents to the assembly, who, from this circumstance, were convinced of his determination to act with candour and justice, whatever might be the intrigues of party; and from thenceforth placed the strongest confidence in the prudence of his administration, and cheerfully co-operated with his measures.

his excellency would allow their speaker, during that parliament, such adequate salary as might be thought suitable to the dignity of his office, and that he would also be pleased to confer some signal mark of the royal favour on the widow of Mr. Punet, the late speaker, in testimony of his services as such, during twenty years and upwards, without any recompense or remuneration. To the former of these addresses the governor made answer, that "the legislative council having, by their address of the 4th of March, 1815, stated that that house was impressed with the expediency of remunerating their speaker, also by an annual salary, for the arduous and important duties attached to his high office, and having prayed that such measures might be adopted for that purpose as should seem meet, he should readily comply with the wishes of the assembly, and make an adequate and proper remuneration for the services and duties of the speaker of that house from the commencement of that parliament to the end thereof, upon being enabled to make a similar provision for the speaker of the legislative council for the same period." In answer to the latter, he acquainted them, that in compliance with their request, and in consideration of the sense he entertained for the long service and great merit of the late speaker, he had, in his majesty's behalf, con-

ferred an annuity on his widow of three hundred pounds currency during her life.

The assembly could not reasonably withhold from the speaker of the upper house, the advantages which they intended to confer on their own. They, therefore, resolved to make good the sums which the governor might cause to be expended for the payment of the salary of the speaker of the legislative council. This resolution being formally communicated to the governor, he sent a message to the assembly to inform them that, in consequence of their addresses, he had conferred, on the speakers of both houses, an annual salary of one thousand pounds from the commencement until the conclusion of that parliament.

Fourteen thousand two hundred and sixteen pounds were granted to make good the advances which the governor had made for the relief of the parishes in distress from the failure of the late harvest. The further sum of fifteen thousand five hundred pounds were advanced for the same purpose. Twenty thousand pounds were granted for the purchase of seed wheat, and other grain, and potatoes, for the more indigent husbandmen, on their giving security to repay the amount advanced. Fifty-five thousand pounds were appropriated for the improvement of the internal communications of the province, and two thousand two hundred

and fifty pounds were granted for the promotion of vaccine inoculation. Various annual acts which had expired, owing to the late dissolution of the provincial parliament, were now renewed.

After these affairs had been despatched, Mr. James Stuart again brought forward the consideration of adopting further measures with respect to the impeachments. He maintained the right of the commons of Lower Canada to petition the regent on the decision which had been given, and respectfully to remonstrate upon the wrongs which the province might ultimately experience in consequence of it. Though his reasoning on the subject was sound and irresistible, the members, at once, fatigued with the labours of the session, and disgusted with the late dissolution, and the hourly reports that a similar event would ensue, should any resolution tending to revive the question be adopted, were desirous of leaving it at rest until the ensuing session, in the expectation that some measures would in the meantime be adopted by the government to appease the public ferment. The consideration of the subject was, therefore, postponed by a great majority of votes until the following session. It was not, however, resumed as proposed in that session, and there is cause to suspect that the present course was purposely adopted as the easiest mode of totally relinquish-

ing the subject. On the twenty-second of March the provincial parliament was prorogued.

The liberal supplies which the assembly had laid at the disposal of the governor, enabled him to direct his attention with effect to the improvement of the colony, and some new roads were opened through the unsettled parts of Lower Canada, the most susceptible of immediate establishments.

From the prorogation to the ensuing session no incident of any moment occurred. The governor, in opening the session, recommended to the consideration of the legislature, the propriety of holding out some inducement to a few good farmers and labourers to settle in the province, for the purpose of introducing, by their example, a more improved system of agriculture. He also informed the house of assembly, that he had received the commands of his royal highness the prince regent to call upon the legislature to vote the sums necessary for the ordinary annual expenditure of the province; that in pursuance of these directions from his majesty's government, he would order to be laid before them an estimate of the sums which would be necessary to defray the expense of the civil government of the province for the year 1818, and that he anticipated a ready execution of the offer, which they (the assembly) had made on a

former occasion, to defray the expenses of his majesty's provincial government, with a liberality that did them honour.

This information was received by the public with much gratification, as it gave to the assembly that weight in the colonial constitution which properly belonged to it, and the seeking whereof had, in 1810, created so much heat and animadversion. The event was, however, as might be expected, received with far other sensations by those who, heretofore, had controlled the public concerns of the province. These, from a state of supreme power, were by the new order of things to descend to a level with the common class of their fellow subjects, if not into a state something verging upon dependence.

Before the public accounts and estimates were sent down to the assembly, the governor was attacked with a paralytic stroke, which deprived him of the use of his left side. This untoward circumstance opened a glimmering of hope to those whose interests were likely to be affected, and who were therefore averse to the measure which the British government had recently adopted, in charging the province with the payment of its own civil list. If by any means a prorogation of the session could have been brought about, before the estimates were submitted to the assembly, and that

body, by making an adequate appropriation for the purpose, *were put in* full possession of the civil list, there would still remain a possibility that the government at home, upon a strong remonstrance, would be induced to alter its opinion, and recall the measure now proposed to the assembly. The governor's life was therefore whispered to be in imminent danger, or at least that his illness was such, as to render him incapable of attending to public business, and that a prorogation must necessarily ensue. An inquiry even is said to have been secretly instituted in a certain quarter for the purpose of establishing his inability to continue in the exercise of the government of the province, and to adopt measures accordingly. These proceedings were however accidentally discovered, and a proposed public inquiry into the state of the governor's health, in the assembly, and an inquiry actually commenced on that subject, in the upper house, put an end to the plot.

After two or three days of adjournments, from a sense of deference towards the governor, it was ascertained that his present infirmity had not impaired his faculties, and business proceeded as usual.

The estimates for the civil list were sent to the assembly at an advanced period of the session, and amounted to the sum of £73,646 8s. 9d. currency

of Lower Canada, for the payment whereof, the funds already by law provided, amounted, at an average for the last three years, to the sum of £33,383, leaving a balance of £40,263 8s. 9d. to be provided for. After debates on the subject, during the greater part of seven days, the assembly came to a resolution that the sum required should be appropriated for the civil list, but owing to the late period of the session at which the matter had been discussed, the house postponed the further consideration of it, until the next meeting of the legislature, without passing a bill of appropriation for the present.

The legislative council had, at the recommendation of the governor, been recently augmented in number, by the addition of several new members. This body, notwithstanding the dissatisfaction it had evinced at the pretensions recently assumed by the lower house, with respect to impeachments, on learning the determination of the prince regent concerning the accusation preferred, last session, against one of the judges at Montreal, suddenly became eager advocates for the doctrine. His royal highness had decided that in this, and all similar cases of impeachment by the assembly, the adjudication of the charges preferred against the party accused should be left to the legislative council. The acquisition of so important a privi-

lege as that of sitting in judgment on the complaints of the commons of Lower Canada in cases of impeachment, raised the dignity of the legislative council in the same ratio, as the right now confirmed to the assembly, had confirmed the power of this body, and balanced these two branches of the legislature with corresponding weights. Although by the instructions which the governor had received from home, this principle was settled, yet, the manner in which it was to be carried into effect, had not been explained. He had, therefore, been under the necessity of recurring to his majesty's government for further instructions in this respect. The substance of the information sought for, was to ascertain whether the legislative council was to take cognizance of impeachments by the commons, in virtue of a special commission, to be issued for the occasion, or whether it were to exercise that authority as a privilege inherent in the upper house from the nature of the constitution, and by the analogy it bore with the house of lords in Great Britain. The governor had not thought it expedient to communicate the instructions he had received to the two branches of the legislature, until it should be in his power to lay before them the full and definitive intention of the king's government on the subject. A report of the resolution which his excellency had

pursued, having gone abroad, such members of the upper house as entertained lofty notions of the inherent privileges of that body, showed a disposition to call in question the propriety of the governor's conduct, and that of his advisers, in a matter which they maintained concerned the privileges of the legislative council, and, therefore, only to be settled by itself. Others, of more moderate pretensions, denied the doctrine of inherent privileges in the upper house, to decide upon the complaints of the commons; a right which, they said, far from being inherent, had, in the present instance, manifestly emanated from the crown, from which it was indispensably requisite that some instrument should be furnished before they could constitutionally and legally proceed on the trial of the accused. In the lower house an opinion was prevalent, that to enable the legislative council to proceed upon the impeachment in question, an act of the provincial legislature for that purpose was indispensable. Some warm debates, on a motion in the upper house for an address to the governor to request information on what had been done relative to the last impeachment, took place. His excellency, therefore, to satisfy both branches of the legislature, sent a message to them, informing them of the steps he had thought it expedient to adopt on the subject. This official communica-

tion, far from satisfying those who had agitated the question in the legislative council, afforded a ground-work upon which subsequent proceedings were intended to be raised; but a prudent regard for the actual state of the governor's health, induced the movers of the proposed address to relinquish the matter for the present.

Among the concerns which occupied the house of assembly, was an inquiry, instituted by Mr. Cuvillier, into the administration of justice in the court of vice admiralty, which was not brought to a close in this session, owing to the great pressure of business which required immediate despatch.

The more important acts passed during this session were, an act for opening a navigable canal from Saint John's to Chambly, on the river Richelieu; an act for the encouragement of agriculture; another to authorize the appointment of commissioners for the improvement of the communication by water with Upper Canada; and another to establish watches and night lights in the cities of Quebec and Montreal. A bill incorporating a bank in the city of Montreal was passed by the lower and upper houses, but it was reserved for the royal consideration.

On the first of April, the public business being concluded, the legislative council and assembly went up to the castle of Lewis (the governor be-

ing still from illness incapable of attending at the council chamber with the usual solemnities) where such bills as were ready, received, with the exception above mentioned, the royal sanction, and his excellency prorogued the parliament, with acknowledgments for the attention and diligence with which the public business had been despatched.

The governor had requested leave to retire from the government of the province on account of his declining state of health, and he was replaced by his grace the duke of Richmond, whose appointment was known at Quebec early in the summer. This nobleman, accordingly, left England for Quebec, where he arrived on the 29th July, in his majesty's ship *Iphigenia*, on board of which Sir John Coape Sherbrooke embarked for England on the 12th August, having, on the eve of his departure, received the most affectionate farewell addresses from the citizens of Quebec, Montreal, and Three Rivers, as well as from the members of the legislative and executive councils.

In reviewing this administration, few observations occur to us that are not obvious to the reader on a perusal of the preceding pages. That he assumed the government of Lower Canada when the nicest management was necessary to heal the divisions which recent events were on the point of

producing, will be as readily admitted as that the prudence of his measures appeased the ferment which then began to agitate the public mind. Prompted by the most liberal principles, and superior to the local prejudices which too frequently predominate in colonial politics, he gave a free scope to the growing energies of the constitution of the province, and imparted to it that character which the British government must, by conferring it, have intended the province to enjoy. Those pretensions, which a few years before had embroiled the executive with the assembly, were now gratuitously yielded to the latter, and the constitution of the colony made more progress in the acquisition of solid advantages during this administration, than it had previously gained since its establishment. The accession of talents and liberal sentiment acquired by the legislative council from his appointments to that body, amply compensated for the casual deficiencies of wealth and local influence, those essential ingredients, peculiarly to be expected in this second branch of the constitution, and without which it cannot long maintain its weight in the direction of public affairs. Such was the wisdom with which he ruled the province, and the confidence which the people reposed in his probity, that with the disposition to turn to their disadvantage, that authority

which, incontestably, he exercised for their benefit, he would have been a more powerful and absolute ruler in the cabinet than he who boldly resorts to violence in support of his measures. That trifling errors may have been occasionally committed is but natural to suppose; but we know of none which upon the slightest remonstrance he would not readily have repaired, and which are not compensated by a multitude of virtuous actions. In fine the administration of Sir John Coape Sherbrooke, in the British North American colonies, will be considered as that of an upright and disinterested Englishman, whose name, while merit continues to be respected, will be remembered with esteem.



APPENDIX.

(A.)

LEGISLATIVE COUNCIL,

Wednesday, 2d March, 1814.

Resolved, That by the criminal Law of England and of this province, no man can be charged with, or impeached of any crime or criminal offence, but by an inquest of the country, the cases excepted in which an information on the part of the crown may be filed.

Resolved, That the lawful inquest of every county, district or government, by whose ministry any subject of his majesty is charged with, or impeached of any crime or criminal offence, however chosen or appointed, represents, for the purpose of such charge or impeachment, the entire community of the people of the county, district or government, in which such subject is so charged or impeached, and acts on their behalf, and in their right.

Resolved, That the right to charge or impeach any officer or officers of his majesty's government in this province, with or for any crime or criminal

offence or misdemeanor in office, (if any such right exists in this province,) is by law vested in the entire community of the people of this province.

Resolved, That the right to charge or impeach an officer or officers of his majesty's government in this province, with or for any crime or criminal offence, or misdemeanor in office, doth not vest, ~~nor can~~ be vested in any one part of the people of this province, more than in another, but is vested in the whole collectively, generally and equally.

Resolved, That since the right to impeach any officer or officers of his majesty's government in this province, with or for any crime, criminal offence or misdemeanor in office, doth not vest in any one part of the people of this province more than in another, but is vested in the whole collectively, generally and equally; the right to charge any officer or officers with or for any crime, criminal offence or misdemeanor in office, doth not, nor can exclusively exist in the representatives of any one part of the people of this province, nor can by them be exercised without the participation of the remainder.

Resolved, That the members of this house are a component part of the people of this province.

Resolved, That the members of this house being appointed by the crown for life, do sit and vote in

the provincial parliament in their own right, and are not represented in the assembly.

Resolved, That the assembly of this province, inasmuch as the members of this house are a component part of the people of this province, and are not therein represented, are the representatives of a part only of the people of this province.

Resolved, That every charge or impeachment of the assembly alone, is a charge or impeachment of a part only of the people of this province.

Resolved, That every charge or impeachment by the assembly alone, being a charge or impeachment by a part only of the people of this province, no charge or impeachment of any officer or officers of his majesty's government in this province, with or for any crime, criminal offence or misdemeanor in office, can by the laws and constitution of this province be exhibited by the assembly alone, nor without the participation of this house.

Resolved, That the imperial parliament of the United Kingdom of Great Britain and Ireland, is the true and perfect representative of the entire community of the people of the said United Kingdom.

Resolved, That the right to charge or impeach any officers of his majesty's government, with or for any crime, criminal offence, or misdemeanor in

office, is by the law and constitution of the United Kingdom of Great Britain and Ireland, vested in the entire community of the people of the said United Kingdom, but is exercised on their behalf, and in their right by the house of commons alone, to the exclusion of the house of lords.

Resolved, That the right of hearing and determining all impeachments exhibited in the United Kingdom of Great Britain and Ireland, by the people of the said United Kingdom, by the ministry of the house of commons, is by the law and constitution of the said United Kingdom vested in the house of lords, to the exclusion of the house of commons and of every other tribunal.

Resolved, That the exclusive right of hearing and determining all impeachments exhibited in the United Kingdom of Great Britain and Ireland, by the people of the said United Kingdom, by the ministry of the house of commons, being vested in the house of lords, the house of lords is thereby, and thereby only, excluded from all participation in voting or exhibiting any such impeachments. The offices of accuser and judge being totally incompatible.

Resolved, That the right of hearing and determining impeachments exhibited in this province by the people of this province, is not vested in the legislative council of this province, and that the

legislative council is not, therefore, excluded from a participation in voting or exhibiting any such impeachment.

Resolved, That the impeachment of the honourable Jonathan Sewell, his majesty's chief justice of this province, by the assembly alone, is an illegal and alarming assumption of power on the part of the assembly.

Resolved, That the impeachment of the honourable James Monk, chief justice of his majesty's court of king's bench, 'for the district of Montreal, by the assembly alone, is an illegal and alarming assumption of power on the part of the assembly.

Resolved, That the said impeachments of the honourable Jonathan Sewell, and of the honourable James Monk, by the assembly alone, tend, in their immediate consequences, to deprive this house of its lawful rights and privileges; to give to the assembly an ascendancy and control over this house, which is entirely incompatible with the due exercise of its legislative powers; and to render the judges of this province, and all other officers of the crown, in this province, dependant on the assembly, and thereby endanger, not only the right administration of justice in this province, but the right administration of his majesty's provincial government in general.

Resolved, That this house doth solemnly protest

against the said impeachments of the honourable Jonathan Sewell, and the honourable James Monk, by the assembly alone, and against all proceedings whatever, which have been and shall be had on the said impeachments, or on either of them.

(B.)

The order of his royal highness the prince regent in council, upon the complaints of the house of assembly of Lower Canada, against the chief justice of the province, the chief justice of the court of king's bench for the district of Montreal, the executive council (judges in the court of appeal) and the puisne justices of the courts of king's bench for the district of Quebec, and Montreal, in the same province, respecting the rules of practice established in those courts, with other documents respecting the decision of his royal highness upon the remainder of the complaints by the said assembly.

No. 1.

(For this, see the order in council under the letter C. in this appendix.

No. 2.

Downing-Street, July 23, 1815.

SIR,

His royal highness the prince regent, having been pleased to refer to the consideration of a committee of the most honourable privy council, certain articles of complaint against you and Mr. Monk, so far as related to the rules of practice established by you in the courts in which you respectively preside, it now becomes my duty to communicate to you the result of that inquiry, which having received the entire approbation of his royal highness, is expressed in the order of which the enclosed is a copy. (No. 1.)

The officer at present administering the government of Canada, has received his royal highness's commands to communicate this decision to the house of assembly; and in making this communication, to state the grounds upon which his royal highness has declined considering, as articles of complaint against you, the advice which you are at different times stated to have given to the preceding governors of the province. It is highly satisfactory to me to assure you, that although his royal highness felt compelled upon general principles to exclude those particular charges from consideration, and thus to preclude you from entering upon your justification, yet his royal highness en-

tertain no doubt as to the general propriety of your and Mr. Monk's conduct, or as to your being able to offer, with respect to them, a full and satisfactory explanation.

I am, Sir,

Your most obedient, humble servant,

(Signed) BATHURST.

To J. Sewell, Esq.

Chief Justice of Lower Canada.

No. 3.

Downing-Street, July 27th, 1815.

SIR,

I have had the honour of receiving your letter of the 24th instant, expressing your apprehension, that as the instructions transmitted to the officer administering the government of Canada, do not embrace any other charges brought against you and Mr. Monk, than those which relate to advice given by you to the governor, and the rules of practice established in your respective courts, the house of assembly may be induced to consider you as not free from blame on the other points of charge, not strictly falling within that description.

As the letter addressed to the officer administering the government of Canada, bears testimony to the uniform propriety of your's and Mr. Monk's

conduct, I do not conceive that there can be any ground for the house of assembly to doubt that your justification is complete : but, I am glad to have an opportunity of stating that the charges not specifically adverted to in my letter, appeared to be, with one exception, of too little importance to require consideration, and *that* (the one against Mr. Monk, which charges him with having refused a writ of *habeas corpus*) was, as well as all the other charges, which are not founded on the rules of practice, totally unsupported by any evidence whatever.

I have the honour to be, Sir,

Your most obedient humble servant,

(Signed) BATHURST.

J. Sewell, Esq.

Chief Justice of Lower Canada.

No. 4.

Council Office, Whitehall, August 17th, 1815.

SIR,

Agreeably to the request, signified in your letter of the 30th ultimo, I have the honour to enclose you a copy of the order in council, dismissing the complaints of the house of assembly of Lower Canada, so far as they relate to the rules of practice, &c. with the names of the lords present in council,

when the report of the lords of the committee respecting those complaints was approved.

The report of the lords of the committee is entered at length in the copy of the order; but it is not the practice to insert the names of the lords who make the report; yet, as it is important that it should be known in Canada, by what high legal authority the said report was made, I have it in command from the lord president to communicate their names to you, and they are as follows:

THE LORD PRESIDENT,
EARL BATHURST,
LORD ELLENBOROUGH,
SIR WILLIAM SCOTT,
MASTER OF THE ROLLS,
SIR JOHN NICHOLL,
LORD CHIEF JUSTICE GIBBS,
LORD CHIEF BARON.

I have the honour to be, Sir,

Your most obedient humble servant,

(Signed) CHETURJUD.

J. Sewell, Esq.

Chief Justice of Lower Canada.

(C.)

(Signed) GORDON DRUMMOND,
Administrator in Chief.

The administrator-in-chief has received the commands of his royal highness the prince regent, to make known to the house of assembly of this province, his pleasure on the subject of certain charges preferred by that house against the chief justice of the province, and the chief justice of the court of king's bench for the district of Montreal.

With respect to such of those charges as relate to acts done by a former governor of the province, which the assembly assuming to be improper or illegal, imputed by a similar assumption to advice given by the chief justice to that governor, his royal highness has deemed that no inquiry could be necessary; inasmuch as none could be instituted without the admission of the principle, that the governor of a province might, at his own discretion, divest himself of all responsibility on points of political government.

With a view, therefore, to the general interests of the province, his royal highness was pleased to refer for consideration to the lords of the privy council, such only of the charges brought by the assembly as related to the rules of practice estab-

lished by the judges in their respective courts, those being points upon which if any impropriety had existed, the judges themselves were solely responsible.

By the annexed copy of his royal highness's order in council, dated the 29th June, 1815, the administrator-in-chief conveys to the assembly the result of this investigation, which has been conducted with all that attention and solemnity which the importance of the subject required.

In making this communication to the assembly, it now becomes the duty of the administrator-in-chief, in obedience to the commands of his royal highness the prince regent, to express the regret with which his royal highness has viewed their late proceedings against two persons who have so long and so ably filled the highest judicial offices in the colony, a circumstance the more to be deplored as tending to disparage, in the eyes of the inconsiderate and ignorant, their character and services, and thus to diminish the influence to which, from their situation and their uniform propriety of conduct, they are justly entitled.

The above communication embracing such only of the charges preferred against the said chief justices as relate to the rules of practice, and as are grounded on advice assumed to have been given by the chief justice of the province to the

late Sir James Craig, the administrator-in-chief has been further commanded to signify to the assembly, that the other charges appeared to his majesty's government to be, with *one* exception, too inconsiderable to require investigation, and that *that*, (namely the one against the chief justice of the court of king's bench, for the district of Montreal, which states him to have refused a writ of habeas corpus,) was, in common with all the charges which do not relate to the rules of practice, totally unsupported by any evidence whatever.

(Signed)

G. D.

*At the Court of Carlton-House, the
29th June, 1818.*

PRESENT:

His Royal Highness the PRINCE REGENT in Council.

WHEREAS there was this day read at the board, a report from a committee of the lords of his majesty's most honourable privy council, dated the 24th of this instant, in the words following, viz:

"Your royal highness having been pleased by your order in council of the 10th December last, in the name and on the behalf of his majesty, to refer unto this committee a letter from Earl Bathurst, one of his majesty's principal secretaries of state, to the lord president of the council, transmitting a copy

of a letter from Sir George Prevost, dated Quebec, the 18th of March, 1814, forwarding an address of the house of assembly of Lower Canada, to your royal highness, with certain articles of complaint therein referred to, against Jonathan Sewell, Esq. his majesty's chief justice of the province of Lower Canada, and James Monk, Esq. chief justice of the court of king's bench for the district of Montreal, and also transmitting a memorial from the executive council, judges in the court of appeals, and of the puisne judges of the court of king's bench for the district of Quebec, and of the court of king's bench for the district of Montreal, in the said province of Lower Canada, praying to be included in the examination and decision of the said articles of complaint, together with a petition from the said Jonathan Sewell, Esq.; in which letter the said Earl Bathurst requests that so much of the said complaints of the house of assembly, as relate to the rules of practice, stated to have been introduced by the said chief justices into their respective courts, may be submitted to your royal highness in council, in order that, if such rules shall be found to have been introduced, it may be decided whether in so doing, the said chief justices have exceeded their authority.

The lords of the committee in obedience to your royal highness's said order of reference, have

taken the said letter and its enclosures into consideration, and having received the opinion of his majesty's attorney and solicitor-general, and been attended by them thereon, and having maturely deliberated upon the complaints of the said house of assembly, so far as they relate to the said rules of practice, their lordships do agree humbly to report as their opinion to your royal highness, that the rules which are made the subject of such complaint of the said house of assembly of Lower Canada, against the said chief justices Jonathan Sewell, Esq. and James Monk, Esq. which their lordships observe were not made by the said chief justices, respectively upon their own sole authority, but by them in conjunction with the other judges of the respective courts, are all rules for the regulations of the practice of their respective courts, and within the scope of that power and jurisdiction with which, by the rules of law, and by the colonial ordinances and acts of legislation these courts are invested, and consequently that neither the said chief justices nor the courts in which they preside have, in making such rules, exceeded their authority, nor have been guilty of any assumption of legislative power."

His royal highness the prince regent having taken the said report into consideration, was pleased in the name and on the behalf of his ma-

jesty, and by and with the advice of his majesty's privy council, to approve thereof, and to order, as it is hereby ordered, that the said complaints, so far as they relate to the said rules of practice, be and they are hereby dismissed this board.

(Signed) JAS. BULLER.

(Signed) G. D.

Resolved, As the opinion of this committee, that the resistance and opposition of the legislative council of which the said Jonathan Sewell and James Monk, were, and are members, to the rights of the commons of Lower Canada, to exhibit the said charges, and the obstructions subsequently interposed to the prosecution of them, prevented this house from being represented by an agent to maintain and support the said charges.

Resolved, As the opinion of this committee, that this house has always been, and is desirous of an opportunity of being heard on the said charges, and of supporting them by evidence, and hath reason to lament that no such opportunity hath hitherto been offered to them.

Resolved, As the opinion of this committee, that an humble representation and petition, on the behalf of the commons of this province, to his royal highness the prince regent, be prepared, appealing to the justice of his majesty's government, and

praying that an opportunity may be afforded to his majesty's dutiful commons of this province, to be heard upon and maintain the said charges.

(E.)

Legislative Council, Saturday, 1st March, 1817.

Resolved, That an humble address be presented to his royal highness the prince regent, humbly beseeching his royal highness not to inflict any punishment upon the honourable Louis Charles Foucher, Esq. one of the puisne justices of the court of king's bench for the district of Montreal, in consequence of the articles of complaint exhibited against him by the assembly of this province, until such articles of complaint shall have been submitted to the consideration of this house, and this house shall have concurred therein, and such articles of complaint after such submission and concurrence shall have been heard and determined in such tribunal as his royal highness shall be pleased to appoint for that purpose; or, until such articles of complaint, without such submission and concurrence, shall have been heard and determined in due course of justice in this house, under such commission as his royal highness shall see fit to issue for that purpose, with

such powers and limitations as to his royal highness shall seem meet.

(F.)

Castle of St. Louis, Quebec, 19th February, 1817.

SIR,

The chief justice of the court of king's bench, for the district of Montreal, having addressed to me a letter explanatory of the cause of his absence from Montreal, in March, one thousand eight hundred and sixteen, at the period when the court is by law appointed to sit there for the trial of criminal causes, for which absence, a charge has been brought against him in the house of assembly, I think it proper to transmit you a copy of this communication, and of the enclosure which accompanied it, in order that in any further proceedings of the assembly on this subject, they may be informed of the circumstances represented by the chief justice.

I have the honour to be,

Sir,

Your most obedient

Humble servant,

(Signed) J. C. SHERBROOKE,
Governor in Chief.

T. L. Papineau, Esq. Speaker
of the House of Assembly.

(COPY.)

Montreal, February 14th, 1817.

SIR,

As I find that the house of assembly is proceeding under a committee, upon a petition presented to that house, by Samuel Sherwood, one of the members thereof, made early in the session of the present legislature, wherein he has stated, "that I had absented myself from sitting in and holding a court of king's bench for the district of Montreal, on the first ten days of the month of March last past, whereby the said court was not held, and the law of the land was dispensed with contrary to the bill of rights," and as this assertion may improvidently be brought forth as a charge against my official character and duties; in a case where the prerogative of the crown has been legally exercised, and when the conduct of its officers is not culpable, I am impressed with the duty of presenting to your excellency my conduct, and the exercise of the prerogative in respect to my duties upon holding the said court in the month of March last. Your excellency will perceive by the enclosed letter, the express injunctions of his excellency the administrator-in-chief, and may be a better judge than I can presume, of the reasons that occasioned his exercise of the rights of the sovereign in respect to my duties; and your excellency will justly appreciate how far the assembly should



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be permitted to proceed in a formal charge, which I submit could not take place, were that house officially apprized of the circumstances attending the conduct that had superinduced a supposed culpability in a servant of the crown.

I have the honour to be,
&c. &c.

(Signed) J. MONK.

His Excellency Sir John Coape
Sherbrooke, K. C. B. &c. &c. &c.

(COPY.)

*Castle of Saint Lewis,
Quebec, 15th February, 1816.*

SIR,

With reference to the representation you have made to his excellency the administrator-in-chief, of your intention of proceeding shortly to Montreal, to attend there the approaching session of the king's bench, for the trial of criminal causes, I am commanded by his excellency to acquaint you, that he conceives your presence here indispensably necessary, to preside as speaker in the legislative council.

I have the honour to be,
&c. &c. &c.

(Signed) ROBERT R. LORING,

Secretary.

The Hon. Chief Justice Monk.

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